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ABSTRACT

This Research in Brief report addresses the problem of dealing effectively with the crime of child sexual abuse. It is noted that child sexual abuse often goes unreported and unprosecuted. Problems faced and posed by child victims on the criminal justice system are reviewed. Legislative revisions, local reforms, and new techniques to alleviate these problems are discussed. The techniques discussed include: (1) enhancing a child's communication skills; (2) modifying the courtroom's physical environment to make it comfortable for the child; (3) preparing child victims to testify; (4) enactment of laws to permit child witnesses to have a supportive person present during court proceedings; (5) enactment of laws directing law enforcement, social service agencies, and prosecutors to conduct joint investigations; and (6) enactment of laws attempting to expedite the adjudication process by giving precedence in trial scheduling to child sexual offense cases. Tables of the 50 states' statutory provisions relevant to child witnesses in sexual abuse cases and statutory citations for selected issues in child witness testimony are included. (ABL)

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# Prosecution of Child Sexual Abuse: Innovations in Practice

Debra Whitcomb

Child sexual abuse occurs with alarming frequency. The National Center on Child Abuse and Neglect (a division of the U.S. Department of Health and Human Services) estimates that in 1983 nearly 72,000 children were reported as sexually maltreated by a parent or household member.[1] Local law enforcement agencies also receive a large and growing number of reports of child sexual abuse although the FBI's Uniform Crime Reports do not tabulate sexual assaults by age of victim.

Perhaps even more disturbing is that an unknown number of similar cases never reach the attention of authorities.

1. U.S. Department of Health and Human Services, National Center on Child Abuse and Neglect, *National Study on Child Neglect and Abuse Reporting* (Denver, American Humane Association, 1984).

Very young children may lack the verbal capacity to report an incident or the knowledge that an incident is inappropriate or criminal; older children may be too embarrassed. Many child victims are threatened into silence. When they do confide in a trusted adult, their reports may be dismissed as fantasy or outright lies.

Even if the child's story is believed, parents and health and social services professionals have been reluctant to enlist the aid of enforcement agencies, largely for fear of the adverse effects of the criminal justice process on child victims and their families.

Even cases that are filed with police may not result in prosecution for a variety of reasons. These include inability to establish the crime, insufficient evidence, unwillingness to expose the child to additional trauma, and the belief that child victims are incompetent, unreliable, or not credible as witnesses. Yet, public sentiment increasingly favors criminal justice intervention in these cases.

This Research in Brief discusses some problems faced and posed by child victims in the criminal justice system. It reviews legislative revisions, local reforms, and new techniques to alleviate these problems.

## Child victims in the criminal justice system

By definition, children are immature in their physical, cognitive, and emo-

### From the Director

**More than 90 percent of all child abuse cases do not go forward to prosecution. In many of these cases, the decision not to proceed is based on concerns about the child's possible performance on the witness stand or the impact of the court process on the child victim's recovery. The unfortunate result is that many suspects are released without the imposition of justice. They not only escape any penalty but have the opportunity for further abuse of their initial victim or other children.**

Both community members and criminal justice professionals are increasingly concerned about our apparent ineffectiveness in dealing adequately with the crime of child sexual abuse.

The National Institute of Justice commissioned Abt Associates, Inc., to review research and experience in dealing with child victims. This *Research in Brief* summarizes the findings discussed in an *Issues and Practices* report, *When the Victim Is a Child*. Included in this *Brief* is a 50-State analysis of relevant statutes enacted as of December 1984.

The *Brief* also suggests new and creative ways of reducing the trauma of trial preparation and court appearances on child sexual abuse victims. At the same time, the approaches outlined maintain the rights of the accused and the integrity of the judicial system.

James K. Stewart
Director
National Institute of Justice

tional development. This immaturity takes its toll when children are involved in court proceedings. From the time an incident of child sexual abuse is revealed, the victim is interviewed repeatedly by adults representing different agencies with overlapping information needs. Continuances are freely granted, causing delays that erode the children's memories and undermine therapeutic efforts to help them get on with their lives.

Children often do not understand the reasons for repeated interviews and delays. Many choose to end the process by recanting the accusation before their cases can be adjudicated.

When these cases do go to court, an entirely different set of problems arises for children who are called to testify. Judges may seem to loom large and powerful over small children who may feel isolated in the witness stand. Attorneys often use language children do not understand and seem to argue over everything the children say. Defense attorneys ask questions intended to confuse them for reasons children cannot comprehend. Many people are watching every move the child witness makes—especially the defendant.

Under such conditions, children cannot be expected to behave on a par with adults. It is not unusual for them to recant or freeze on the witness stand, refusing to answer further questions. At best, this behavior weakens the Government's case; at worst, it leads to dismissals for lack of evidence.

The problems of immaturity are compounded when the child is a victim of sexual abuse. Generally, the child is the only witness to this abuse, and often there is no physical evidence. Consequently, the case becomes a matter of the child's word against the adult's. This fact is all too obvious to offenders and is very simple for defense attorneys to exploit.

Incest, in particular, traps the child in an extremely precarious position. Children are taught to obey and respect their elders, and incestuous offenders often command secrecy with threats that range from withdrawal of love to death of the child, mother, or other loved ones.

Visions of the father in jail, the mother distraught, the family on welfare, and the children placed in foster care typically suffice to prevent a victim from divulging the incestuous situation, often for years, sometimes forever. A child who reports promptly is by far the exception, not the rule.

If the child's situation becomes known and the child protection or law enforcement authorities intervene in the family, the child may be under intense pressure to retract the allegation. Regardless of whether the father or the child is removed from the home, dissolution of the family appears imminent and the child may shoulder the blame. Such pressure to recant is further intensified the longer the case is delayed, becoming strongest when the child faces the defendant from the witness stand.

## A call for change

If child victims are treated insensitively while their allegations are investigated and adjudicated, their participation in the process is likely to suffer, in turn weakening the government's case.

Victim advocates and prosecutors across the country are experimenting with a variety of measures intended to reduce the stress on child victims who become entangled in the complexities of the child protection and criminal justice systems. Several States have already adopted laws that permit alternative—and some very controversial—techniques.

Included in this Research in Brief is a chart analyzing selected provisions of pertinent legislation that had been enacted as of December 1984. The reform measures are listed in two categories: (1) those seeking to alleviate the perceived trauma of giving live, in-court testimony (hearsay exceptions, exclusion of spectators); and (2) those authorizing mechanical interventions to obtain the child's testimony (videotape and closed-circuit television). The chart includes extensive footnotes providing important clarifications or elaborations of its contents.

Also included in this Research in Brief are statutory citations for selected issues in child witness testimony including competency, abused child hearsay exceptions, exclusion of spectators from the courtroom, and the admissibility of videotaped testimony.

This brief discusses some practical concerns surrounding the actual implementation of proposed reforms. The findings are based largely on personal interviews conducted with judges, prosecutors, victim advocates, protective services workers, and law enforcement officers in Des Moines, Iowa; Milwaukee, Wisconsin; Orlando, Florida; and Ventura, California. Each jurisdiction possessed a different array of innovative statutes and procedures, thereby enabling researchers to examine a broad range of alternative techniques.

The results of this study suggest that many of the new reforms have been rarely used. Many unresolved questions about their ability to withstand judicial scrutiny (not addressed by this study) in addition to a number of practical concerns tend to dissuade prosecutors from taking full advantage of the measures.

## Practical concerns with the new techniques

The plight of child victims in the courtroom has generated considerable media attention, much of it focused on the potential of modern technology to alleviate the stress of testifying. Videotape and closed circuit television, in particular, have received much media coverage, and legislators have felt pressured to adopt these controversial measures with limited opportunity for reflection and study.

The findings of this study suggest that these techniques can be used only in a small fraction of child sexual abuse cases, and that there are less obtrusive, and less controversial, ways of achieving similar effects for all but the most seriously traumatized children.

Perhaps the most radical of the proposed reform measures is the use of closed circuit television to broadcast the child's live testimony from another room adjacent to the trial courtroom. As of December 1984, this technique was statutorily authorized in only four States: Kentucky, Louisiana, Oklahoma, and Texas.

These laws permit the attorneys and a supportive adult (e.g., victim assistant or close relative) to be present with the child during the broadcast. The defendant and equipment operators may also be present, but the child is not allowed to see or hear them.

Whether the use of closed circuit television satisfies the defendant's constitutional right of confronting his or her accuser has not yet been resolved. But prosecutors and judges question the value of this technique from another standpoint: What effect does the new medium have on jurors' perceptions?

Although there is some empirical evidence to suggest that televised trial materials have no markedly negative effect on courtroom communication between trial participants and jurors,[2] these findings are far from conclusive.

The primary purpose of closed circuit television is to avoid direct confrontation between the child and the defendants, but there are other means to this end. Some prosecutors use their own bodies to block the victim's view of the defendant during the direct examinations. Others simply instruct children to look elsewhere while they testify, or to look for a supportive family member or victim advocate in the courtroom audience. One victim advocate encourages children to tell the judge if the defendant is making faces.

Such instructions may not completely eradicate the child's fear of seeing the defendant in court, but at least they impart a small sense of control in a situation that may seem overpowering to a child.

Videotaping testimony is another technique that is highly praised, yet seldom used where it is authorized. At this writing, at least 14 States have adopted laws authorizing the introduction of videotaped testimony taken at a deposition or preliminary hearing in lieu of live testimony at trial. But some prosecutors point out that the environment at a deposition can be more traumatic than that of a trial courtroom. Depositions take place in small rooms, thereby bringing the child and the defendant into closer physical proximity than in the trial courtroom. The judge may not be there to monitor the behavior of the defendant or his counsel, and victim advocates may not be permitted to attend.

If a court finding of emotional trauma or unavailability is prerequisite to a videotape substitution for live testimony, the child may be subjected to a battery of medical and/or psychiatric tests by examiners for the State and the defense. Some prosecutors also believe that a child who successfully endures all the proceedings leading up to the deposition or preliminary hearing can succeed at trial as well; indeed, by that point the videotaped deposition merely substitutes one formal proceeding for another.

The purpose of the videotape statutes is to spare the child the presumed trauma of a public appearance in court. Yet, many interview respondents observed that the courtroom audience is *not* a major concern for most children. They also noted that there rarely is a general audience; when spectators are present, they can often be persuaded to leave voluntarily by simple request of the prosecutor. Existing statutes for closing courtrooms—another popular remedial technique—are seldom invoked.

At least three States—Texas, Louisiana, and Kentucky—have adopted laws permitting a videotape taken of the child's first statement to be introduced into evidence. For the taping, the child must have been questioned by a non-attorney, and both the interviewer and child must be available for cross-examination. The principal goal of these statutes is to reduce the number of interviews the child must give, but they allow for other benefits as well.

Videotaping the child's first statement can capture the child's most candid reaction to the incident. Prosecutors and victim advocates report that the technique encourages guilty pleas.[3] Police, social workers, and prosecutors in many jurisdictions are already using videotape to achieve these goals, even in the absence of laws authorizing introduction into evidence at trial.

There are drawbacks to these videotape statutes, however. Since child victims must be available for cross-examination, the laws do not protect them from the presumed trauma of testifying at trial and confronting the defendant. And, unless the court places them under a protective order, the videotapes may become public property, perhaps even appear on media broadcasts, causing incalculable trauma for the child and family. Also, the tapes become a liability if the child volunteers contradictory information, or if improper questioning techniques were used to elicit responses.

## Useful and effective techniques

Much attention has been focused on technological aids intended to help child victims in the adjudication process. Some of the most useful and effective techniques, however, do not involve advanced technology. Statutes creating special exceptions to hearsay for certain out-of-court statements of child sexual abuse victims fall into this category.

Child sexual abuse victims sometimes make innocent remarks that are quite explicit in their portrayal of sexual activities that should be unknown to a child. For example, when a 7-year-old girl spontaneously asks her father, in child's language, about details of erection and ejaculation, there can be little doubt that this child was sexually abused in some way. Yet this kind of

2. Gerald R. Miller, "The Effects of Videotaped Trial Materials on Juror Responses," in *Psychology and the Law*, ed. Gordon Bermant, Charles Nemeth, and Neil Vidmar (Lexington, MA: Lexington Books, 1976), 205.

3. This effect was reported to us in telephone interviews with prosecutors across the country. See also, Reinhardt Krause, "Videotape, CCTV Help Child Abuse Victims Tell Their Story but Legal Problems Remain," in *Law Enforcement Technology* (November 1984), 16–18.

## Exhibit 1

# Statutory provisions relevant to child witnesses in sexual abuse cases*

| | AL | AK | AZ | AR | CA | CO | CT | DE | DC | FL | GA | HI | ID | IL | IN | IA | KS | KY | LA | ME | MD | MA | MI | MN | MS | MO | MT | NE | NV | NH | NJ | NM | NY | NC | ND | OH | OK | OR | PA | RI | SC | SD | TN | TX | UT | VT | VA | WA | WV | WI | WY |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **LIVE TESTIMONY** | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| **Competency** | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| • child -14, court determines | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | IC,1 | | | | | | | | | | IC,1 | IC,1 | | | | IC,1 | | IC,1 | | | |
| • child -10, court determines | | | S | | | S,2 | | | | | | S | | S | | | | S,3 | | | | | S | S,4 | | S,2 | | | | | | S,3 | | | S,R | | | | | | | S,2 | | | S | | | S | |
| • child competent if understands oath | S,R | R | | | | | | | C | | S | S | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | R | | | | | | | | |
| • competent if understands oath | | | | | R | | C | | | | | | | C | | S,R | S | S | | R | | S | | | | | R | | | R | | | R | | | | | | | | | S | | R | | | | | | |
| • every person competent | | | R | S | | R | | R | | S | | | | | | | | | | | S | | R | | S | | | S | S | | S | R | | | R | | S | S | S | | | S | | | | R | | S | R |
| **Abused child hearsay exception** | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| • child's age (in years) | | | 10 | | | 15 | | | | | | | 13 | 10 | | M | | | | | | | | 10 | | | | | | | | | | | | | | | | | | 10 | | M | | | 10 | | | | |
| • court finds reliable | | | | | | | | | | | | | | | | S | | | | | | | | S | | | | | | | | | | | | | | | | | | S | | S | | | S | | | | |
| • child testifies | | | S | | | S | | | | | | | S | S | | | | | | | | | | S | | | | | | | | | | | | | | | | | | S | | S | | | S | | | | |
| • child unavailable, statement corroborated | | | S | | | S | | | | | | | | S | | S | | | | | | | | S | | | | | | | | | | | | | | | | | | S | | S | | | S | | | | |
| • notice of introduction | | | S | | | S | | | | | | | | S | | | | | | | | | | S | | | | | | | | | | | | | | | | | | S | | | | | | S | | | |
| **Exclusion of spectators from courtroom** | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| • victim witness age (in years) | any | 16 | any | | any | | | | 16 | any | | | 13 | | | | | 15 | | | 18 | any | 18 | any | | any | | | 16 | | any | any | any | | | | | | | | M | | | any | | | | any | | |
| • during testimony only | | S | | | 6 | | | | S | | | | S | | | | | S | | | | | 9 | | | | | | 10 | | | | S | | | | | | | | S | | | | | | | 6 | | |
| • public transcript provided | | S | S | | S | | | | | | | | | | | | | | | | | | | | | | | | S | | | | | | | | | | | | | | | | | | | | | |
| • media exception | | | S | | | | | | S | | | | S | | | | | 8 | | | | | | | | | | | | | | | | | | | | | | | | S | | | | | | | | | |
| • family, guardian, moral support exceptions | | S | | | S | | | | S | | | | | | | | | S | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| **MECHANICAL TESTIMONY** | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| **Videotaped testimony admissible** | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| • child's age (in years) | | 16 | 15 | 17 | 15 | 15 | | | 16 | | | | | | | | | 12 | | 14 | | | | | | | | | | | | 13 | 12 | | | 12 | | | | | 15 | | 12 | | | | | 18 | | |
| • defendant's presence specified | | S | S | S | | S | | | S | | | | | | | | | 9 | | S | | | | | | | S | | | | S | | | | S | | | | | | | 9 | | | | | S | | |
| • opportunity for cross-examination specified | | S | | S | | 10 | | | | | | | | | | | | | | S | | | | | | | 10 | | | | S | | | | S | | | | | | S | | | | | S | | |
| • court findings required (footnote) | | | | 11 | 12 | 13 | | | 14 | | | | | | | | | | | 15 | | | | | | | | | | | | 16 | 17 | | | | | | | | 18 | | | | | | | 19 | | |
| • court findings include unavailability | | | | | S | S | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | 5 | | | | | | | | | |
| • government may call child to testify | | | | S | | | | | | | | | | | | | | NO | | | | | | | | | | | | | | NO | | | | NO | | | | | | | NO | | | | | S | | |
| • other (footnote) | | 20 | | | 21 | | | | | | | | | | | | | | | 22 | | | | | | | 23 | | | | | 24 | 25 | | | | | | | | 21 | | | | | | | | | |
| **Closed circuit testimony available** | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| • child's age (in years) | | | | | | | | | | | | | | | | | | 12 | 14 | | | | | | | | | | | | | | | | | | | | | | | | | 12 | | | | | | | | |
| • defendant present, but child cannot hear or see | | | | | | | | | | | | | | | | | | S | S | | | | | | | | | | | | | | | | | | | | | | | | | S | | | | | | | | |
| • attorneys present | | | | | | | | | | | | | | | | | | S | S | | | | | | | | | | | | | | | | | | | | | | | | | S | | | | | | | | |
| **Abused child videotape/film hearsay exception** | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| • child's age (in years) | | | | | | | | | | | | | | | | | | 12 | 14 | | | | | | | | | | | | | | | | | | | | | | | | | 12 | | | | | | | | |
| • no attorneys present at taping | | | | | | | | | | | | | | | | | | S | S | | | | | | | | | | | | | | | | | | | | | | | | | S | | | | | | | | |
| • interviewer child available to testify | | | | | | | | | | | | | | | | | | S | S | | | | | | | | | | | | | | | | | | | | | | | | | S | | | | | | | | |

**SOURCE**: Statutes were provided by State governments in the fall of 1984.
*Except for age limits, all numbers refer to footnotes on following page.
See Exhibit 2 for statutory citations and a brief description of related laws not included on the chart.

KEY S = Statute (includes codified rules) C = Case law only
R = Rule of evidence (not codified) M = Minor child

1. State most likely uses "14-year-old" common law standard.

2. Exception: A child victim of a sexual offense is a competent witness and shall be allowed to testify without prior qualification in any judicial proceeding involving the alleged offense. Trier of fact is to determine the weight and credibility to be given to the testimony.

3. Child under 12 years may not testify under oath unless court is satisfied that child understands the nature of an oath.

4. Exception for sexual abuse cases repealed. New language reads: "A child describing any act of sexual contact or penetration performed on or with the child by another may use language appropriate for a child of that age."

5. Corroboration is *not* required.

6. This provision applies to the preliminary hearing.

7. This provision provides for in-camera testimony.

8. Exception for a reasonable but limited number of members of the public.

9. Defendant present, but the court to ensure child cannot hear or see defendant.

10. Testimony to be taken under the Rules of Evidence.

11. Court order: "for good cause shown."

12. Court finding: "that further testimony would cause the victim emotional trauma so that the victim is medically unavailable or otherwise unavailable ..."

13. Upon application, court to make preliminary finding whether "the victim is likely to be medically unavailable or otherwise unavailable ..."; at trial, court to find whether: "further testimony would cause the victim emotional trauma so that the victim is medically unavailable or otherwise unavailable ..."

14. Court finding that: "there is substantial likelihood that such victim or witness would suffer severe emotional or mental distress if required to testify in open court."

15. Court "expressly finds that the emotional or psychological well-being of the person would be substantially impaired if the person were to testify at trial."

16. Court Rule: Court order upon: "Showing that the child may be unable to testify without suffering unreasonable and unnecessary mental or emotional harm." (Statute: Court order: "for good cause shown.")

17. For a child witness 12 years old or under, testimony may be videotaped *without* court findings. For a witness greater than 12 years old, court must find the witness "is likely to suffer severe emotional or mental distress if required to testify in person ..."

18. Court finding that "further testimony would cause the victim emotional trauma, or that the victim is otherwise unavailable ... or that such testimony would ... be substantially detrimental to the well-being of the victim ..."

19. Court order where "there is a substantial likelihood that the child will otherwise suffer emotional or mental strain."

20. The videotapes are listed as an exception to hearsay in R. Evid. R. 804.

21. Testimony to be videotaped at preliminary hearing.

22. Stenographical testimony or other court approved means also available. Videotapes are specified in the videotape law as an exception to hearsay.

23. Victim in prosecutions for sexual intercourse without consent if victim is less than 16 years; deviate sexual conduct; incest (no age specified).

24. Videotapes are specified in the videotape law as an exception to hearsay.

25. Videotape law applies to testimony presented to the Grand Jury.



statement does not fit into traditional hearsay exceptions and would be inadmissible in most States. The new laws would admit such a statement, provided that certain indicia of reliability are met, even when the child is unavailable as a witness.

Many effective innovations do not require statutory reform at all. These include the following:

- **enhancing the child's communication skills through dolls, artwork, and simplified vocabulary;**

- **modifying the physical environment—providing a small chair for the child, having the judge sit on a level with the child or wear business clothes instead of a judicial robe; and**

- **preparing child victims before their courtroom appearances—briefing them on the roles of people in the courtroom, introducing them to the judge, taking them for a tour of the courtroom, and allowing them to sit in the witness chair and speak into the microphone.**

**By demystifying the courtroom, these techniques help to alleviate children's fear of the unknown, thereby enhancing the accuracy and efficiency of their recall abilities.[4]**

**Most of the legislative reforms address only the trial experience, and therefore benefit only those children whose cases go to trial. However, the trial is only the culmination of a long series of stressful events that the child endures as the case is adjudicated. Some States have adopted laws intended to ease the child's anxiety throughout the criminal justice process. Such legislation includes the following:**

- **laws permitting child witnesses to have a supportive person present during court proceedings, and offering the services of the court to explain the proceedings to the child, assist the**

4 Helen E. Dent and Geoffrey M. Stephenson, "An Experimental Study of the Effectiveness of Different Techniques of Questioning Child Witnesses," in *British Journal of Social and Clinical Psychology*, (1979) 41; citing W. Stern, "The Psychology of Testimony," in *Journal of Abnormal and Social Psychology*, Vol. 34 (1939) 3; 20; E. Lord, "Experimentally Induced Variations in Rorschach Performance," in *Psychological Monograph*, Vol. 64 (1950) 10; and C. Zimmerman and R. A. Bauer, "Effect of an Audience on What Is Remembered," in *Public Opinion Quarterly*, Vol. 20 (1956) 238–248.

## Exhibit 2

## Statutory Citations for Selected Issues in Child Witness Testimony

### Competency

Ala. Code § 12–21–165;
Ariz. Rev. Stat. Ann. § 12–2202 (controlling);
Ark. Rev. Stat. Ann. § 28–1001;
Cal. R. Evid. R. 701;
Colo. Rev. Stat. § 13–90–106(1)(b) (controlling);
Fla. Stat. § 90.601;
Ga. Code §§ 38–1607, 1610;
Hawaii Rev. Stat. § 621–16;
Idaho Code § 9–202;
Ind. Code § 34–1–14–5 (applied to criminal matters via § 35–37–4–1; § 35–1–31–3);
Iowa Code § 622.1;
Kan. Stat. Ann. § 60–417;
Ky. Rev. Stat. § 421.200;
La. Rev. Stat. Ann. § 15:469;
Md. Cts. & Jud. Proc. Code Ann. § 9–101;
Mass. Gen. Laws. Ann. ch. 233, § 20;
Mich. Stat. Ann. § 27A.2163;
Minn. Stat. § 595.02(1)(f);
Miss. Code Ann. § 13–1–3;
Mo. Rev. Stat. § 491.060(2);
Neb. Rev. Stat. § 27–601;
Nev. Rev. Stat. § 50.015;
N.J. Rev. Stat. § 2A:81–1 and R. Evid. R. 17;
N.Y. Crim. Proc. Law § 60.20 (Consol.);
Ohio Rev. Code Ann. § 2317.01;
Okla. Stat. tit. 12, § 2601;
Or. Rev. Stat. § 40.310;
Pa. Stat. Ann tit. 42, § 5911 (Purdon);
S.D. Codified Laws Ann. § 19–14–1;
Tenn. Code Ann. § 24–1–101;
Utah Code Ann. §§ 78–24–2, 76–5–410;
Wash. Rev. Code 5.60.050;
Wis. Stat. § 906.01;
Wyo. Stat. § 1–138.

Some of the above are codified versions of R.EVID.R.601. In addition, R.EVID.R.601 is found separately for the following States: Alabama, Alaska, Arizona, Colorado, Delaware, Iowa, Maine, Michigan, Montana, New Mexico, North Carolina, North Dakota, Ohio, Texas, Vermont, Washington, Wyoming.

### Abused child hearsay exceptions

Ariz. Rev. Stat. § 13–1416 (1984);
Colo. Rev. Stat. § 18–3–411 (3);
Ill. Rev. Stat. ch. 38, para. 115–10 (1983);
Ind. Code § 35–37–4–6 (1984);
Kan. Stat. Ann. § 60–460(dd) (1982);
Minn. Stat. § 595.02(3) (1984);
S.D. Codified Laws Ann. § 19–16–38 (1984);
Utah Code Ann. § 76–5–411 (1983);
Wash. Rev. Code § 9A.44.120 (1982)

Related provisions: Some States permit the use of certain out-of-court statements in a criminal prosecution if the witness is available to testify. See, for example, Del. Code Ann. tit. 11, § 3507 (1953) (statement can be consistent or inconsistent).

### Exclusion of spectators from courtroom

Ala. Code § 12–21–202 (1940);
Alaska Stat. § 12.45–048 (1982);
Ariz. R. Cr. P.R. 9.3(c) (1973);
Cal. Penal Code § 868.7(a) (1983);
Fla. Stat. § 918.16 (1977);
Ga. Code § 17–8–53 (1933);
Ill. Rev. Stat. ch. 38, para. 115–11 (1983);
La. Rev. Stat. Ann. § 15:469.1 (1981);
Mass. Gen. Laws Ann. ch. 278 §§ 16A (1923), 16C (1978);
Mich. Comp. Laws § 750.520;
Minn. Stat. § 631.045 (1982);
Miss. Const. art. III, § 26;
Mont. Code Ann. § 3–1–313 (1977);
N.H. Rev. Stat. Ann. § 632–A: 8 (1979);
N.Y. Jud. Law § 4 (1968);
N.C. Gen. Stat. § 15–166 (1981);
N.D. Gen. Code § 27–01–02 (1974);
S.D. Codified Laws Ann. § 23A–24–6 (1983);
Vt. Stat. Ann. tit. 12, § 1901 (1947);
Wis. Stat. § 970.03(4) (1979).

Related provision: Utah Code Ann. § 78–74 (1953). Utah's law authorizing the closure of the courtroom in an action of ". . . , seduction, . . . , rape, or assault with intent to commit rape," has been construed to apply only in *civil* actions to avoid conflict with the Constitution.

### Videotaped testimony admissible

Alaska Stat. § 12.45.047 (1982);
Ariz. Rev. Stat. Ann. § 12–2311 (1978);
Ark. Stat. Ann. §§ 43–2035 to 43–2037 (1981, 1983);
Cal. Penal Code 1346 (1983);
Colo. Rev. Stat. § 18–3–413;
Fla. Stat. § 918.17 (1984);
Ky. Rev. Stat. § 421.350 (1984);
Me. Rev. Stat. Ann. tit. 15, § 1205 (1983);
Mont. Code Ann. §§ 46–15–401 to 46–15–403 (1977);
N.M. R. Cr. P.R. 29.1 (1980) (based on N.M. Stat. Ann. § 30–9–17 (1978));
S.D. Codified Laws Ann. § 23A–12–9 (1983);
Tex. Code Crim. Proc. Ann. art. 38.071 (1983);
Wis Stat. § 967.04(7) (1983).

Related provision: Iowa Code § 232.96 applies to petition alleging a child in "need of assistance" in juvenile proceedings, *not* criminal prosecutions.

Related provisions: State law sometimes permits a deposition in sexual assault cases to be used in lieu of live testimony *if* the accused consents. See, for example, Va. Code § 18.2–67 (law does *not* specify videotape).

### Closed circuit testimony available

Ky. Rev. Stat. § 421.350(3) (1984);
La. Rev. Stat. Ann. § 15:260 (1984);
Tex. Code Crim. Proc. Ann. art 38.071(3) (1983).

### Abused child videotape film hearsay exception

Ky. Rev. Stat. § 421.350(1) and (2) (1984);
La. Rev. Stat. Ann. §§ 15:440.1 to 15:440.6 (1984);
Tex. Code Crim. Proc. Ann. art 38.071(1) and (2) (1983).

family and child, and advise the court and prosecutor;

- laws directing law enforcement, social service agencies, and prosecutors to conduct joint investigations in child sexual abuse cases, using a single trained interviewer; and

- laws attempting to expedite the adjudication process by giving precedence in trial scheduling to sexual offense cases or to cases in which the victim is a minor.

These laws reflect the legislature's concern for child victims, and, for maximum effect, they require the personal commitment of the individuals handling these cases. Indeed, dedicated people in many jurisdictions have introduced these innovations successfully even without legislation. These precautions can and should be provided to every child coming into the system, not only to those whose cases actually come to trial or whose emotional well-being is severely threatened by the prospect of testifying.

## Conclusions and recommendations

There are two areas of statutory reform that appear to be necessary and beneficial to many child witnesses. The first is abolishing special competency requirements for children, preferably by establishing a presumption that every witness is competent (as in the Federal Rules of Evidence), and leaving the determination of credibility to the trier of fact.

To date, some 20 States have adopted this standard; three more States have waived their competency requirements in cases of child sexual abuse. Since psychological research on children's memory and morality suggests that all but the youngest children (i.e., age 3 and under) can testify as truthfully and accurately as adults,[5] it seems unfair to impose a special requirement on children.

Secondly, legislatures should adopt special hearsay exceptions to admit certain out-of-court statements that do not fall within the existing exceptions to hearsay. These exceptions will not apply in every prosecution, but they are useful when a child freezes or recants on the witness stand, or when the defense asserts special exceptions for child sexual abuse victims; other States that lack residual hearsay exceptions should consider adopting similar laws.

Regardless of the existing statutory structure in a given State, there is much that can be done to ease the child victim's trauma. Each prosecutor's office should designate at least one attorney to receive training or specialize in child sexual abuse cases. Training should be provided, not only in general concepts of child development and family dynamics, but also in the specifics of State law and case precedent.

Child development and mental health professionals in the community should be tapped for assistance in interviewing children, selecting potential jurors, and formulating opening and closing statements. Above all, prosecutors should work to improve communication and coordination among the several agencies responsible for child welfare. A concentrated team effort is necessary to develop a more rational, cohesive approach to the adjudication of crimes against children.

Each child should have a victim advocate or other supportive adult for assistance and accompaniment throughout the investigation and adjudication processes. Where prosecutors lack access to a victim/witness assistance unit, provision should be made for volunteer support or carrying over the guardian ad litem function from juvenile court proceedings. (The Child Abuse Prevention and Treatment Act of 1974 requires States to appoint a guardian ad litem to represent the best interests of children involved in abuse and neglect proceedings.)

Support persons should receive the same specialized training given to prosecutors so that they can advocate for the child's best interests from a knowledgeable standpoint.

Judges, especially, should be aware of a child's unique situation in the criminal court setting. Some interviewees objected to any intervention on behalf of a witness in the courtroom on grounds that it prejudices the jury to believe the allegation of victimization; certain departures, however, are necessary for child witnesses simply because they are children.

At a minimum, judges should be alert to lines or forms of questioning that confuse or intimidate the child. They should recognize signs of discomfort or embarrassment that may cloud or distort the child's testimony, and then take the initiative, for example, to call a recess to identify and remedy the source of the child's distress.

Whenever possible, and where the prosecutor fails to file a motion, judges should order alternative procedures on their own motion. They should avoid granting continuances unless absolutely necessary, and they should ensure that every child has a supportive friend or advocate in court.

There are many ways to relieve the child victim's anxiety and elicit effective testimony. Drastic interventions—such as closed circuit television and videotaped depositions in lieu of live testimony—should be used only in extraordinary cases.

Sensitive treatment of the child throughout the pretrial period, along with creative interpretations of available statutes and case law precedent, may be no less effective in most cases. These measures should not be overlooked in our desire to aid child victims.

*Debra Whitcomb of Abt Associates, a research firm in Cambridge, Massachusetts, was principal investigator for the National Institute of Justice study called* When the Victim Is a Child *(NCJ 97664). It is on sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. Stock number is 027–000–01248–5.*

*Points of view or opinions expressed in this publication are those of the author and do not necessarily reflect the official position or policies of the U.S. Department of Justice.*

5. For an excellent overview of research on children's capabilities as witnesses, see the *Journal of Social Issues*, Vol. 40 (1984), ed. Gail S. Goodman.

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